

REMARKS**A. Interview Summary**

Applicant thanks Supervisory Patent Examiner Alexander Kalinowski for the courtesy extended to Applicant and his representatives during a telephonic interview conducted on September 9, 2009. During the interview, Applicant's representatives and Supervisory Examiner discussed the Non-final Office Action issued for this case on June 10, 2009. Specifically, Applicant and Supervisory Examiner discussed the pending rejections of claims 1-32 and 36-68 under 35 U.S.C. § 102(b) for allegedly being anticipated by U.S. Pre-Grant Publication No. 2002/0147670 to Lange ("Lange"), the pending rejections of claims 1-32 and 36-37 under 35 U.S.C. § 101 and the remaining pending rejections. Supervisory Examiner Kalinowski and Applicant's representative reached an agreement that Lange does not anticipate any claim presently pending in the Application. Applicant's representatives explored possible claim amendments with Supervisory Examiner Kalinowski to address the remaining pending claim rejections under 35 U.S.C. §§ 101 and 112. Supervisory Examiner Kalinowski proposed changes to obviate the remaining pending claim rejections based on 35 U.S.C. §§ 101 and 112.

B. Status of the Claims

Prior to the submission of this paper, claims 1-32 and 36-68 were pending and under examination.

Claims 11, 18, 19, 47, 53 and 54 are rejected under 35 U.S.C. § 112, ¶ 1 for allegedly failing to meet the enablement requirement.

Claims 11, 18, 19, 47, 53 and 54 are rejected under 35 U.S.C. § 112, ¶ 2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 23-32 and 58-67 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 28-30 and 63-65 are rejected under 35 U.S.C. § 112, ¶ 2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-32 and 36-67 are rejected under 35 U.S.C. §101 for allegedly being directed to non-statutory subject matter.

Applicant was advised that that should claim 20 be found allowable, claim 23 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof.

Claims 1-32 and 36-68 are rejected under 35 U.S.C. §102(b) for allegedly being anticipated by Lange.

C. Claim Amendments

Claims 1-2, 4, 12-13, 15, 20, 23, 25, 30, 36-39, 41-44, 47-53, 55, 58-60 and 62-68 have been amended to incorporate changes suggested by Supervisory Examiner Kalinowski to overcome the rejections under 35 U.S.C. § 101. In making these amendments, Applicant does not concede that the § 101 rejections in the Office Action are proper, and hereby reserves the right to remove the added language if deemed appropriate in a later stage of prosecution. Support for these amendments is found generally throughout the original specification as filed [e.g. see original specification, page 9, line 18 - page 10, line 6 and originally filed claims 33-34].

Claim 36 has also been amended to correct a drafting error. The claim no longer recites “free of buy/sell indicators.”

Claims 36-39, 41-44, 47-53, 55, 58-60 and 62-68 were also amended to improve their clarity. Specifically, the claims were amended to use the language “computer-readable instructions” or “instructions” rather than “program” and “program code.” Support for these amendments is also found generally throughout the original specification as filed [e.g, see original specification, page 9, line 18 - page 10, line 6 and originally filed claims 33-34]. These amendments were made to put these claims in better form and were not made for any reason related to patentability.

Claims 53 and 68 were further amended to improve their clarity. These amendments were made to put these claims in better form and were not made for any reason related to patentability.

D. Indefiniteness and Enablement Rejections Under 35 U.S.C. §112, ¶¶ 1 and 2

The Office Action rejects claims 11, 18, 19, 47¹, 53 and 54 for allegedly failing to meet the enablement requirement of 35 U.S.C. §112, ¶ 1. According to the Office Action,

The amendments to these claims consist of the following terminology: 'the option spread is at least one selected from the group consisting of. This terminology implies that there is a group or selection process that lists all selections within a group and allows the user to pick from said selection. The Examiner has found no such evidence in the specification.'"

[Office Action, page 4, ¶8]. Similarly, the Office Action rejects claims 11, 18, 19, 47, 53 and 54 under 35 U.S.C. § 112 ¶ 2 for allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. According to the Office Action,

The amendments to these claims consist of the following terminology: 'the option spread is at least one selected from the group consisting of. This

¹ The June 10, 2009 non-final Office Action issued for this identifies claim 47 as rejected for using Markush language. A review of claims 46 and 47, however, reveals that claim 46 uses such language but claim 47 does not. Applicant respectfully submits that the Examiner erroneously identified claim 47 instead of claim 46. Accordingly, Applicant will address this rejection as though it identifies claim 46 instead of claim 47.

terminology implies that there is a group or selection process that lists all selections within a group and allows the user to pick from said selection. The Examiner has found no such evidence in the specification.”.

[Office Action, page 5, ¶ 10].

Applicant respectfully traverses these rejections. As an initial matter, the groups in these Markush-style claims belong to art-recognized classes. See MPEP §§ 803.02, MPEP § 2173.05(h). Furthermore, the members of each of the groups appear in the specification. [See page 15 line 17 through page 21 line 17 (claims 11, 19, 46 and 54) and page 9 lines 19-21 (claims 18 and 53).] Accordingly, Applicant respectfully requests reconsideration and withdrawal of these grounds of rejection under 35 U.S.C. § 112, ¶¶ 1 and 2.

E. Indefiniteness Rejections Under 35 U.S.C. § 112, ¶2

The Office Action rejects claims 23-32 and 58-67 under 35 U.S.C. § 112 ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Again, Applicant thanks Supervisory Examiner Kalinowski for his suggestions during the interview. These claims have been amended in a manner that Applicant believes captures the Supervisory Examiner’s suggestions.

Accordingly, in view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. § 112 ¶ 2.

F. Rejections Under 35 U.S.C. § 101

The Office Action rejects claims 1-32 and 36-67 under 35 U.S.C. § 101 as not claiming eligible subject matter. During the telephonic interview on September 9, 2009, Supervisory Examiner Kalinowski proposed claim language that could be used to overcome the rejections under 35 U.S.C. § 101. Again, Applicants thank Supervisory Examiner Kalinowski for his suggestions during the interview and have amended the claims in a manner that Applicants believe captures the Supervisory Examiner’s suggestions.

Accordingly, in view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. § 101.

G. Double Patenting

The Office Action states that “should claim 20 be found allowable, claim 23 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof” and that claim “23 is a substantial duplicate of claim 20.” Applicant respectfully traverses this statement. Claim 20 contains two limitations that do not appear in claim 23. Specifically, claim 20 requires “comparing, by a computer, the optioncode, contract, strike, and callput of each user selection with each other user selection in the sequence” and “assigning a quantity for each user selection in the sequence of user selections received based upon the comparison of each user selection with each other user selection and the assigned quantity of each user selection.” Neither of these limitations appears in any form in claim 23. Furthermore, claim 20 “determine[es], by [a] computer, a type of option spread based upon a previous option count, the comparison of each user selection with each other user selection, and the assigned quantity of each user selection” whereas claim 23 “determin[es], by a computer, for the selected sequence, a type of option spread, an option spread name, an option spread valuation, and a quantity for the option spread.”

Accordingly, in view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and withdrawal of this statement regarding double-patenting.

G. Rejections Under 35 U.S.C. §102

The Office Action rejects Claims 1-32 and 36-68 are rejected under 35 U.S.C. §102(b) for allegedly being anticipated by Lange. As noted above, during the September 9, 2009 telephonic interview, Supervisory Examiner Kalinowski agreed that Lange is not

anticipatory prior art under § 102 for any of the pending claims. Accordingly, in view of the foregoing amendments and remarks, Applicants thanks =respectfully request reconsideration and withdrawal of this statement regarding double-patenting.

CONCLUSION

Based on the foregoing amendments and remarks, Applicants respectfully request reconsideration and withdrawal of the rejection of claims and allowance of this application.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 50-3732, Order No. 16103-105002.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 50-3732, Order No. 16103-105002.

Respectfully submitted,
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